The SECURE Act 2.0: Better Than The Original?

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Proposed retirement plan legislation proves a moving target for retirement plan sponsors and those who work with them, as bills can take a long time to become law and provisions can change dramatically. However, the latest piece of retirement plan legislation warrants plan sponsor attention. The bill was introduced on October 27, 2020 by the chair of the House Ways and Means Committee and the ranking Republican on the Committee, the same individuals who brought us the SECURE Act, the most significant piece of retirement plan legislation in more than a decade, which aimed at improving employees' access to retirement plans and making it easier to save.

The "Securing a Strong Retirement Act of 2020," which some have lauded as "The SECURE Act 2.0," seeks to build on the achievements of the SECURE Act, with provisions that could be significantly beneficial to retirement plan sponsors and participants.

SECURING A STRONG RETIREMENT ACT PROVISIONS

An overview of the bill's key provisions and their impact on retirement plan sponsors and participants is provided below.

Auto-Enrollment Mandate

The proposed legislation makes automatic enrollment a requirement for newly established (not existing) plans. Moving forward, these plans will be required to automatically enroll participants at a minimum 3% deferral rate, auto-escalating to 10% over time. There are exceptions for some new plans, including churches, governments, tiny employers (10 or fewer employees), and start-ups.

Increase in RMD Age, Again

The SECURE Act raised the RMD age from 70½ to 72. This bill takes it from 72 to 75. Additionally, individuals with combined retirement plan/IRA balances totaling $100,000 or less would be exempt from the RMD requirements entirely.

Reduced RMD Penalty

The maximum tax penalty for failure to take an RMD would be reduced from a draconian 50 percent to 25 percent.

Enhanced Saver's Credit

The Saver's Credit is often referred to as the Phantom Credit because almost no one can use it. While the provision is not a perfect fix (the credit will still be non-refundable), the bill provides some people the chance to take advantage of the credit by increasing the income thresholds under which the credit can be claimed, as well as increasing the maximum credit amount from $1,000 to $1,500.

CITs for 403(b) Plans

Currently, due to 403(b) investment restrictions, Collective Investment Trusts (CITs) are not available in the vast majority of 403(b) plans. This bill remedies that situation, expanding investment flexibility for 403(b) plan sponsors.

Age 60 Catch-Up Provision

Currently, individuals who are age 50 or older are permitted to defer an extra $6,500 (indexed) into their 401(k), 403(b), or governmental 457(b) plan. Under this bill, that amount increases to $10,000 for those age 60 or older.

Increase in Small Employer Tax Credits

Under the new legislation, the employer tax credit for startup plans increases from 50% of administrative costs to 100% of administrative costs for employers with fewer than 50 employees. The dollar limit remains at $5,000. Additionally, for organizations with up to 100 employees, there is an additional tax credit for employer contributions to non-defined benefit (DB) plans. Tax credits are also extended to small employers who join an existing plan, such as a MEP or PEP.

Age 50 Catch-Up Quirk Fixed

The bill fixes a quirk in the law where the age 50 catch-up amount for IRAs was not indexed.

403(b) MEPs

The bill allows 403(b) plans to participate in Multiple Employer Plans (MEPs), which is not currently permitted. Interestingly though, 403(b) Pooled Employer Plans (PEPs) are still not permitted; however, a separate piece of proposed legislation is.

Student Loan Repayment Matches

Employers are permitted to treat student loan payments as elective deferrals for the purposes of retirement plan matching contributions.

Tax Credits for Including Military Spouses

A tax credit is provided to employers who allow non-highly compensated military spouses to enter their organization's retirement plans (and be eligible for employer contributions) within two months of hiring date. This helps those military spouses who may not remain employed long enough to be eligible for and/or vested in their own employer's plan and contributions.

Small Contribution Incentives Permitted

The bill permits employers to provide de minimis financial incentives to employees, beyond matching contributions, to encourage them to contribute to retirement (gift cards, for example).

Safe Harbor for Elective Deferral Failure Corrections

Automatic enrollment contribution errors can be corrected up to 9½ months following the end of the plan year in which the errors were made.

Reduction in the Long-Term, Part-Time Employee Service Requirement

The SECURE Act's provision allowing long-term, part-time employees the ability to make elective deferrals to a 401(k) plan, requires employees to complete either one year of service (1,000-hours rule) or three consecutive years of services where the employee completes at least 500 hours of service. The bill reduces the three-year requirement to two years.

Variable Annuity ETFs Permitted

Exchange-traded funds (ETFs) are widely available through retirement plans, but not through individual annuities, due to Treasury regulations which were written before ETFs existed. The bill fixes this by directing the Treasury to update their regulatory requirements.

Eliminating Required Notices

The bill eliminates the requirement of certain required notices to be sent to unenrolled participants.

"Lost and Found" Created

A national "lost and found" database is to be created for missing retirement plan participant account balances.

EPCRS Expansion

The bill expands the Employee Plans Compliance Resolution System (EPCRS) to allow for the correction of many more plan errors through self-correction.

Deferral Election Deadline Eliminated

The requirement that employees of governmental 457(b) plans must make deferral election changes prior to the 1st of the month, in order for the change to be effective for that month, is eliminated. Oddly, the bill does not eliminate it for private tax-exempt 457(b) plans.

Expanded Charitable Distribution Provision

The charitable distribution provisions of IRAs are expanded to qualified retirement plans, including 403(b) and governmental 457(b) plans.

CONCLUSION

The bill has primarily been met with positive feedback, as many understand the need to address the country's looming retirement savings crisis, especially considering the devastating economic impact of the coronavirus pandemic. This bipartisan piece of legislation is a positive sign that Congress may be able to put aside differences in a divisive political environment to focus on the needs of the country's employees and retirees.

As always, plan sponsors and fiduciaries should stay abreast of this and all retirement plan legislation. Stay tuned to Cammack Retirement for updates. To read the bill in its entirety, click here.

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For more information on our services, please contact **Mike Volo,** Senior Partner, at **781.997.1426** or **mvolo@cammackretirement.com**.

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